

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 14-20119

v.

Honorable Nancy G. Edmunds

EVAN ALEXANDER JOHNSON (D-3),

Defendant.

/

**ORDER DENYING DEFENDANT'S MOTION TO SUPPLEMENT
REQUEST FOR CERTIFICATE OF APPEALABILITY [591]**

The matter is before the Court on Defendant's motion for leave to supplement his request for a certificate of appealability. (ECF No. 591.) The Court, however, has already denied Defendant a certificate of appealability on all of the claims raised in his 28 U.S.C. § 2255 motion that were denied.¹ (See ECF No. 589.) Thus, Defendant's motion is moot.

But even if the Court were to consider Defendant's supplement, Defendant has not shown he is entitled a certificate of appealability. To receive a certificate of appealability, "a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotation marks and

¹ The Court's order denying Defendant a certificate of appealability was issued on January 19, 2021. (ECF No. 589.) This motion was filed on January 7, 2021 but not entered on the docket until January 26, 2021. (ECF No. 591.)

citation omitted). Here, Defendant seeks a certificate of appealability on the ineffective assistance of counsel claim in which he argued that his counsel should have challenged whether armed robbery under Michigan state law qualifies as a RICO predicate act. In rejecting this claim, the Court noted that both the Sixth Circuit and this Court have previously stated that robbery in violation of Michigan law is a racketeering act of robbery. See ECF No. 578, PgID 7799-7800 (citing *United States v. Johnson*, 726 F. App'x 393, 409 (6th Cir. 2018); *United States v. Jefferson*, No. 14-20119, 2016 WL 337021, at *5 (E.D. Mich. Jan. 28, 2016)). Defendant takes issue with the Court's reliance on these cases, which he argues did not consider the same argument he raised in his motion. Regardless of the context of those statements, the Court found them persuasive here and appropriately concluded that Defendant's counsel was not ineffective in failing to raise this issue. In sum, Defendant has not presented anything that would alter the Court's conclusion that he has failed to show that reasonable jurists could debate whether his claim should have been resolved in a different manner.

Based upon the foregoing, Defendant's motion is DENIED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: January 27, 2021

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 27, 2021, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager